

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL PONTING and
JUDY WONG,

No. C 12-06442 WHA

Plaintiffs,

v.

LOWE'S HIW, INC.

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AGAINST PLAINTIFF JUDY WONG
AND VACATING HEARING**

INTRODUCTION

In this action for loss of consortium, defendant Lowe's HIW, Inc., moves to dismiss plaintiff Wong's sole claim. Plaintiffs have filed a notice of non-opposition (Dkt. No. 20 at 2). For the reasons stated below, Lowe's unopposed motion for summary judgment is **GRANTED**.

STATEMENT

Plaintiff Judy Wong claims a loss of consortium as a result of injuries suffered by plaintiff Michael Ponting on August 11, 2010, when he allegedly slipped on paint in a Lowe's hardware store in San Bruno, California. Plaintiffs have never married or registered with the State of California as domestic partners, but were granted a "Declaration of Domestic Partnership" by the County of San Francisco on May 22, 2000 (Dep. of Judy Wong at 10:1-12; Int. Ans. No. 2).

ANALYSIS

Summary judgment is proper when the pleadings and the evidence in the record "show that there is no genuine dispute as to any material fact and that the moving party is entitled to

judgment as a matter of law.” Rule 56(a). A dispute is genuine only if there is sufficient evidence for a reasonable factfinder to find for the non-moving party, and material only if the fact may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). In this analysis, all reasonable inferences must be drawn in the light most favorable to the non-moving party. *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1018 (9th Cir. 2010). Unsupported conjecture or conclusory statements, however, cannot defeat summary judgment. *Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1103 (9th Cir. 2008).

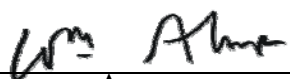
Loss of consortium can exist when a negligent third party injures the claimant’s spouse. *Elden v. Sheldon*, 46 Cal. 3d. 267, 277 (1988). Domestic partners recognized under California law have the same rights and responsibilities as spouses. Cal. Fam. Code § 297.5. Defendant argues, however, that the state does not recognize plaintiffs as either domestic partners *or* spouses; therefore, plaintiff Wong cannot successfully claim loss of consortium. California Family Code Section 299.6(b) preempted local governments from creating new domestic partnerships after July 1, 2000, and recognized domestic partnerships created before that date only upon registration with the Secretary of State. Plaintiffs received a domestic partnership from the City and County of San Francisco on May 22, 2000, but never registered as domestic partners with the state. This order finds that had plaintiffs properly registered as domestic partners, then plaintiff Wong could have met this element of her claim. Because plaintiff Wong is neither plaintiff Ponting’s spouse nor his state-registered domestic partner, she cannot make a valid claim for loss of consortium.

CONCLUSION

Plaintiffs have filed a notice of non-opposition to the motion. For this reason and those stated above, defendant’s motion for summary judgement on plaintiff Wong’s sole claim for loss of consortium is **GRANTED**. The hearing on **JANUARY 29, 2014**, is hereby **VACATED**.

IT IS SO ORDERED.

Dated: January 7, 2014.


 WILLIAM ALSUP
 UNITED STATES DISTRICT JUDGE